



Dallas County

Public Defender's Office

ACCEPTED
05-19-01492-CR
FIFTH COURT OF APPEALS
DALLAS, TEXAS
2/19/2020 3:07 PM
LISA MATZ
CLERK

FILED IN
February 19, 2020
5th COURT OF APPEALS
DALLAS, TEXAS
2/19/2020 3:07:41 PM
LISA MATZ
Clerk

Liza Matz
Fifth Court of Appeals
George L. Allen, Sr. Courts Bldg.
600 Commerce Street, Suite 200
Dallas, Texas 75202-4658

Dallas County District Attorney's Office
Appellate Division
133 N. Riverfront Blvd.
Dallas, Texas 75207
Sent via e-mail to: DCDAappeals@dallascounty.org

Re: Court of Appeals Number: 05-19-01492-CR
Trial Court Case Number: F19-52721-R
Style: *Andrew Anderson v. The State of Texas*

Letter Brief with Motion for Abatement Hearing or Affidavits

Dear Ms. Matz:

I am writing in response to your letter of February 3, 2020 directing the parties to address whether this Court has jurisdiction in this appeal.

Background

The 265th Judicial District Court of Dallas County convicted Appellant on October 7, 2019 for committing aggravated assault with a deadly weapon. (CR: 64). TEX. PENAL CODE § 22.02(a)(2). Appellant mailed his notice of appeal from the county jail on November 4, 2019, which was two days before his 30-day notice of appeal deadline. (CR: 64, 75-76). TEX. R. APP. P. 9.2(b)(1), 9.2(b)(1)(C), 25.2(b), 26.2(a)(1). Appellant addressed his envelope to "Dallas County Court # 265 [,] 133 N. Riverfront blvd [,] Dallas Tx 75207".

November 16, 2019 was the last day for the clerk to receive Appellant's notice of

appeal that he mailed on November 4, 2019 under the prisoner mailbox rule. (CR: 64, 75-76). TEX. R. APP. P. 9.2(b)(1), 9.2(b)(1)(C), 25.2(b), 26.2(a); *see* TEX. R. APP. P. 9.2(b)(1)(A) (stating a document “received within ten days” after its due date is considered timely filed so long as it was “sent to the proper clerk”); *Castillo v. State*, 369 S.W.3d 196, 198 (Tex. Crim. App. 2012) (discussing prisoner mailbox rule as exception to physical delivery to clerk for document to be filed). The district clerk file-stamped Appellant’s notice of appeal on December 2, 2019. (CR: 75-76).

Two Questions

Did Appellant timely file his *pro se* notice of appeal under the prisoner mailbox rule when:

1. Appellant mailed his notice of appeal from the county jail to “Dallas County Court # 265” instead of to “the proper clerk,” *i.e.*, whether Appellant complied with Texas Rule of Appellate Procedure 9.2(b)(1)(a), and
2. It “appears” that the notice of appeal was “received” too late, *i.e.*, whether the district clerk received Appellant’s notice of appeal by November 16, 2019 as required under Rule 9.2(b)(1).

TEX. R. APP. P. 9.2(b)(1), 9.2(b)(1)(a).

Question One Resolved as Matter of Law

It is settled “imperfections in the address on an envelope containing a notice of appeal do not automatically render the mailbox rule inapplicable”; an envelope is “properly addressed” when it is “sufficiently specific as to be timely received at the proper place”. *See Moore v. State*, 840 S.W.2d 439, 440–41 (Tex. Crim. App. 1992) (*per curiam*) (stating an envelope was sufficient when it did not specify whether delivery should be to the district clerk or to the county clerk with both located in the Frank Crowley Courts Building in Dallas); *Taylor v. State*, 424 S.W.3d 39, 49 (Tex. Crim. App. 2014) (Keller, P.J., dissenting) (agreeing with majority “that *Moore* stands for the proposition that minor, non-fatal discrepancies in envelope addressing should not deprive a person of the right to appeal”); *Turner v. State*, 529 S.W.3d 157, 158-59 (Tex. App. — Texarkana 2017, no pet.) (indicating that, when the defendant sends his notice of appeal to the trial judge, there must be a substantial additional factor, such as sending it to the incorrect city, for the envelope to be considered improperly addressed). An envelope like Appellant’s that did not specify “district clerk” but correctly stated the court was “sufficiently specific” because 1) the clerk and court both receive their mail via the Frank Crowley Courts Building “receiving department,” 2)



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the receiving department is “an agent of the district clerk,” and 3) the district clerk actually received Appellant’s notice of appeal. TEX. R. APP. P. 9.2(b)(1)(A); *Moore*, 840 S.W.2d at 440–41; *see Taylor*, 424 S.W.3d at 45 (stating an appellate court could “reasonably infer” the envelope was accurately addressed given that it was received). Unlike an appellate judge, a trial court judge who receives an envelope that the receiving department delivered cannot accept delivery. *Aguilar v. State*, Appeal No. 05-04- 01194-CR, 2005 WL 1415244 *1 (Tex. App. — Dallas June 17, 2005, no pet.) (memo. op., not designated for publication); *Taylor*, 424 S.W.3d at 41 (applying the “rationale of *Moore*” in stating that the defendant’s mistake in sending notice of appeal to the wrong court was “a harmless procedural defect”); TEX. R. APP. P. 9.2(a)(2) (stating appellate judge can accept delivery of an instrument if the judge marks the date and time of the delivery and promptly sends the instrument to the clerk); TEX. R. APP. P. 25.2(c)(1) (stating when the court of appeals receives a notice of appeal the appellate court clerk shall “send the notice to the trial court clerk”). As demonstrated from the authorities including *Taylor*, *Moore*, and *Turner*, this Court should conclude that Appellant sent his notice of appeal to “the proper clerk” as a matter of law. TEX. R. APP. P. 9.2(b)(1)(A). *Taylor*, 424 S.W.3d at 41; *Moore*, 840 S.W.2d at 440–41; *Turner*, 529 S.W.3d at 158-59.

Resolution of Question Two Requires Factual Development

If the receiving department at the Frank Crowley Courts Building received Appellant’s notice of appeal within 12 days after Appellant mailed it, *i.e.*, by November 16, 2019, this Court has jurisdiction to consider Appellant’s appeal. TEX. R. APP. P. 9.2(b)(1), 26.2(a)(1); *Taylor*, 424 S.W.3d at 46. Appellant “should not be penalized” by requiring him to produce “affirmative evidence” to show that his notice of appeal was received by November 16, 2019, because such information was beyond Appellant’s control. *Compare Taylor*, 424 S.W.3d at 42, 45 (noting that intermediate appellate court allowed prisoner to file a statement under penalty of perjury regarding facts about him timely mailing his notice of appeal). Appellant submits that this Court should presume that the Clerk received his notice of appeal by November 16, 2019, or in the alternative abate the appeal for a hearing and findings to “solve the mystery”; or in the second alternative grant leave for Appellant to file affidavits in this Court. *Taylor*, 424 S.W.3d at 42.

Please let me know if the Court has any additional areas of inquiry.

Respectfully submitted,

/s/ *Christian T. Souza*

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